

Service Date: April 20, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER Of The Application of)	UTILITY DIVISION
the Regulated Members of TELEPHONE)	
EXCHANGE CARRIERS OF MONTANA)	DOCKET NO. 94.7.25
(TECOM) for Revisions to Intrastate Carrier)	
Access Rates and Tariffs.)	ORDER NO. 5804b

ORDER ON TECOM'S MOTION TO STRIKE

BACKGROUND

1. AT&T Communications of the Mountain States, Inc. (AT&T), MCI Telecommunications Corporation (MCI) and U S West Communications, Inc. (USWC) are intervenors in this proceeding. TECOM and USWC reached an agreement between themselves and filed a "Stipulation and Motion to Suspend Procedural Order" in this docket on January 9, 1995. AT&T filed an objection to the Motion and was joined by MCI. On January 18, 1995, the Commission voted to deny the Motion, asking USWC and TECOM to explain their stipulated positions in answer and rebuttal testimony.

2. On February 13, 1995, the final day scheduled for intervenors to prefile testimony, AT&T filed the Testimony of Patricia A. Parker, an AT&T employee, explaining AT&T's position regarding TECOM's request for revision of access charges. On February 28, 1995 counsel for MCI filed a letter stating that MCI "supports, in its entirety, the Testimony of Patricia A. Parker, filed by AT&T."

3. TECOM filed a Motion to Strike from the record in this docket the correspondence dated February 28, 1995, from Sharon A. O'Leary, counsel for MCI. TECOM argued that the letter offered improper testimony on behalf of MCI and violates TECOM's rights of due process for the following reasons: (1) the letter attempts to introduce testimony on behalf of MCI while at the same time negating TECOM's ability to effectively issue data requests on, or cross-examine the testimony

from MCI's position; and (2) the correspondence attempting to offer testimony is in violation of the Procedural Order as it was filed after February 13, 1995, the deadline established for intervenors to offer testimony in question and answer form.

4. MCI responded to TECOM's Motion stating that it has no intention of offering any witnesses or any testimony in this docket and is merely supporting the testimony filed by AT&T. In addition, MCI stated that it did not wish to be foreclosed from doing so should the need arise.

5. The Montana Public Service Commission (Commission) held a work session on April 18, 1995 to address TECOM's Motion to Strike the correspondence from MCI's counsel from the record.

CONCLUSIONS OF LAW

1. Due process in administrative proceedings, guaranteed by the United States and the Montana constitutions and codified in the Montana Administrative Procedure Act at ' 2-4-612(1), MCA, requires that parties have notice of the claims against them and a reasonable opportunity to be heard to contest them. See, e.g., Morgan v. United States, 304 U.S. 1, 58 S.Ct. 773 (1938). Constitutional requirements of a fair hearing encompass the elements of meaningful notice of the issues and full ability to respond to the issues and present argument on the issues. This includes presenting evidence and cross-examination of adverse witnesses.

2. When two or more intervenors have substantially similar interests and positions, the Commission may limit the number of parties who will be permitted to cross-examine, make and argue motions, or object on behalf of such intervenors. ARM 38.2.2406. The interests and positions of MCI and AT&T are substantially the same in this proceeding. Because the interests and positions of AT&T and MCI are substantially the same at this point in this proceeding, MCI was not required to offer testimony on its own behalf when the testimony of AT&T supports MCI's position as well as that of AT&T. The Commission may limit MCI's participation at a later stage in this proceeding pursuant to ARM 38.2.2406, or other law, if such involvement would violate the due process rights of TECOM.

3. MCI's letter to the Commission supporting the Testimony of AT&T in its entirety does not constitute "evidence" or "testimony." Therefore, TECOM's due process rights are not violated by TECOM's inability to issue data requests to MCI, cross-examine MCI, or otherwise respond to MCI's statements in such letter. With reference to the letter on behalf of MCI by its attorney, due process for TECOM is satisfied by MCI's notice of its position which is the same as AT&T's position.

ORDER

THEREFORE, THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. TECOM's Motion to Strike Sharon A. O'Leary's correspondence dated February 28, 1995, from the record herein is denied.

2. The letter dated February 28, 1995, from Sharon A. O'Leary on behalf on MCI, does not constitute evidence or testimony. Such letter may properly remain in the record for the purpose of supporting AT&T's position on the issues as stated in the letter.

DONE AND DATED this 18th day of April, 1995 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.